IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

APPEAL FROM ORDER NO. 28 OF 2003

1. Francisco Mascarenhas,
   Son of Mariano Mascarenhas,
   Age 52 years, seaman,
   And his wife,

2. Cecilia Carolina Mascarenhas,
   Wife of Francisco Mascarenhas,
   Age 46 years,
   Both residing at House No. 7,
   Taki, Tilamol, Quepem, Goa. .... Appellants

Versus

1. Prakash Manguesh Adarkar,
   Son of Manguesh Adarker,
   Proprietor of Sateri Constructions,
   Having office at Ashirwad Building,
   3rd floor, House number not known,
   Opposite Meenakshi Hotel,
   Margao, Goa.

2. Ujwala Prakash Adarker,
   Wife of Prakash Adarkar,
   Major in age,
   Residing at House No. M-91,
   Gogol Housing Board,
   Margao, Goa. .... Respondents

Shri S.D. Lotlikar, Sr. Advocate with Ms. S.P. Rao, Advocates for the Appellants.
None for the Respondents.

CORAM : **P.V. KAKADE, J.**

DATE : **24th NOVEMBER, 2006**

ORAL JUDGMENT :

Heard Advocate Mr. Lotlikar for the appellants. None appears for the respondents, though served.

2. This is an appeal against the order passed by the Civil Judge, Senior Division, Quepem, dismissing the appellants-plaintiffs application for temporary injunction, seeking interim relief against the defendants.

3. The plaintiffs came with the case that there existed a landed property situated at Sanguem which was the suit property and purchased by the plaintiffs while sale deed dated 9/3/1978. Defendant no.1 approached the plaintiffs with a proposal to buy the said property for developing the same by construction of a multi-storyed building therein, after demolishing the existing house, whereupon after initial negotiations the documents of title in possession of the plaintiffs were shown to the defendant no.1. The plaintiffs informed defendant no.1 that the said family of Premanand Madkaikar resided in the said house as rent paying tenant of the plaintiffs and the defendant no.1 agreed to hold negotiations with the plaintiffs' said tenant Madkaikar so as to clear the encumbrance of tenancy

of the suit property. Accordingly, the agreement was executed on 29/1/2000 and it was agreed in the agreement that plaintiffs shall sell the property to the defendant no.1 for a cash consideration of Rs. 1,20,000/-, in addition to one shop and a double bedroom flat, to be allotted by the defendant no.1 to the plaintiffs in the building in the suit property. However, though unreasonable long time expired, the defendant no.1 did not furnish to the plaintiffs' the plan of the flat and the shop and the dispute occurred which resulted in a suit, wherein, an application for temporary injunction also came to be filed. The defendant no.1 challenged the application on merits and it was adjudicated by the learned trial Judge, coming to the conclusion that plaintiffs had not made out prima facie case against the defendants.

Hence, the present appeal.

4. It is seen that the defendant, though served is not ready to come before the Court and, therefore, apparently has lost interest in the matter. The observations made by the trial Court appear to be that the dispute regarding the validity of the said agreement of sale and irrevocable power of attorney dated 29/1/2000, are in question. It was further observed that the legality and the validity of the impugned documents were

the subject matter, which were to be determined in the course of the final hearing and, hence, the application came to be rejected. It may be noted that in the course of this appeal, filed in the year 2003, interim relief was granted and stay is operative for last three years. As a result of which, the so called project has not materialised. In view of this position, I am of the view that the order of dismissal of the application for temporary injunction is not sustainable in law. The interest of both the parties would be served if the trial of the suit itself is proceeded as expeditiously as possible, by maintaining the order of stay passed by this Court.

5. In the result, the appeal is allowed. The order passed by the lower Court is hereby set aside and the application for temporary injunction dated 29/4/2002 is hereby allowed. It is further directed that the trial Court shall take up the matter for adjudication as expeditiously as possible so as to complete the adjudication, after giving opportunity to both the sides to lead their evidence, within one year from the date of the receipt of the writ of this Court. With these directions, the appeal stands disposed of with no order as to costs.

P.V. KAKADE, J.

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